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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Zachman et al.
Serial No. : 10/695,200
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Title : TRANSDUCER ARRANGEMENT
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Examiner : Addie, Raymond W.
Art Unit : 3671

MAIL STOP APPEAL BRIEF-PATENTS

Commissioner for Patents
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Sir:

REPLY BRIEF ON APPEAL

This Reply Brief is being filed pursuant to the provisions of 37 CFR 41.41(a)(1) in response to the Examiner's Answer mailed February 15, 2006. Arguments responsive to the issues raised in the Answer are set forth below. Pursuant to §41.43(a)(1), the Examiner is requested to acknowledge receipt and enter the reply brief.

Claim Objection

Regarding the objection to claim 2, the applicants disagree with the Examiner's position that the "desired grade" being measured is seen to be the instantaneous slope of the claimed "gravity based cross slope sensor" with respect to the screed head the sensor. See page 14, Item 10 of the Examiner's Answer. The "desired grade" although does not require the measuring of any adjacent grade, can include measuring of any adjacent grade, such as existing roadway, grade, subgrade, panted line, string grade, or even the grade of the soil at the construction site receiving the concrete being level. While it is appropriate to use the specification to determine what the applicants intend a term to mean, a positive limitation from the specification cannot be read into a claim that does not impose that limitation. See, e.g., *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997)(Office personnel are to give claims their broadest

reasonable interpretation in light of the supporting disclosure), and *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003) (claims must be interpreted "in view of the specification" without importing limitations from the specification into the claims unnecessarily). See also *In re Zletz*, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) ("During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow.... The reason is simply that during patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of language explored, and clarification imposed.... An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed, as much as possible, during the administrative process.").

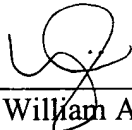
Clearly, there is not a question as to what the term "desired grade" means, only to its scope. The Applicants also disagree with the Examiner position stated in the Office Action mailed May 24, 2005 and made final, on page 2, item 1, that there is no limit to the various different "desired grades" that can be measured and stored. Clearly, as the gravity-based slope sensor is provided to the screed head, the desired grade is limited to the various different "desired grades" that can be measured by the gravity base sense provided to the screen head. Obviously, if the screen head is benched to the soil at the construction site receiving the concrete being level, and the operator wishes for that grade of the soil to be the "desired grade" than the cross-slope of the gravity based sensor is stored in memory. If, however, a benching tool is being use, and the operator wishes for the grade of the benching tool to be the "desired grade" than the screed head is benched to the tool and the cross-slope of the gravity based sensor is stored in memory. In still other circumstances, the screen head can be benched to other sections of work surfaces, wooding forms, etc., to which the operator may select as the "desired grade." The "desired grade" may also be the position at which the laser receivers receive the elevational reference, indicating that the screed head is positioned at the correct height and orientation. Clearly, in view of the above examples, the "desired grade" may be the current transverse grade of the gravity-base cross slope sensor, but it also may be a grade

selected by the operator by moving the screed head until the "desired grade" is measured by the gravity based cross slope sensor.

Accordingly, the applicants again assert that to one skilled in the art the term "desired grade" is precise, clear, correct, and unambiguous, and need not be so limited by importing limitations from the specification into the claims unnecessarily as suggested by the Examiner. As this objection is improper for the above noted reasons, withdrawal is respectfully requested.

Respectfully submitted,

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